

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

GEORGIANA BREEDEN HIXSON,

Plaintiff and Respondent,

v.

GARY S. WOLFE,

Defendant and Appellant.

B242538

(Los Angeles County  
Super. Ct. No. BC322374)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Yvette M. Palazuelos, Judge. Affirmed.

Gary S. Wolfe, in pro. per.; Law Offices of Sanford M. Passman and Sanford M.  
Passman for Defendant and Appellant.

Law Office of Glenn H. Johnson and Glenn H. Johnson for Plaintiff and  
Respondent.

---

Gary S. Wolfe (Wolfe) appeals from a judgment against him and in favor of Georgiana Breeden Hixson (Hixson) for \$7,969,414 plus costs and attorney fees. We find no error and affirm.

### **FACTS<sup>1</sup>**

This matter went to trial on Hixson's claims against Wolfe, an attorney, for breach of contract, legal malpractice and accounting. According to Hixson, Wolfe wrongfully took over \$5 million from her.

On September 7, 2011, the trial court issued an interlocutory judgment in favor of Hixson on all her claims. Subsequently, the trial court issued an order of accounting and special reference directing a referee to calculate the money that Wolfe took from Hixson in excess of what he was owed.

The referee issued a final report and recommendation. The trial court adopted the referee's alternative recommendation that judgment be entered for \$7,969,414, plus costs and attorney fees. Wolfe objected to the referee's report and recommendation, but the objection was overruled. The trial court issued a statement of decision in support of final judgment. Final judgment was entered the same date.

This timely appeal followed.

### **DISCUSSION**

#### **I. Statute of Limitations.**

According to Wolfe, the trial court erred when it ruled that Hixson's legal malpractice claim was not barred by the statute of limitations set forth in Code of Civil Procedure section 340.6.<sup>2</sup> This argument fails for a host of reasons.

---

<sup>1</sup> The appellate record is inadequate for our review, and Wolfe failed to provide a proper statement of facts. With a few exceptions, his statement of facts is unsupported by record citations. Moreover, it is incomplete and one-sided. As a consequence, our own statement of facts is sparse.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Though Wolfe contends that the trial court committed prejudicial error, he does not identify the error. In other words, he does not state that the trial court committed legal error subject to de novo review, that it abused its discretion, or there is insufficient evidence to support the trial court's factual findings. Wolfe's argument is a "general assertion, unsupported by specific argument." (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) He "apparently assum[es] this court will construct a theory supportive of his" appeal, but that "is not our role." (*Ibid.*) "One cannot simply say the court erred, and leave it up to the appellate court to figure out why. [Citation.]" (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368; *Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11 ["It is not our responsibility to develop an appellant's argument"].) Wolfe should take heed that "[w]hen an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]" (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.)

In his opening brief, Wolfe failed to cite to any portion of the appellate record establishing that he raised section 340.6 as an affirmative defense, and that the trial court ruled on it. Assuming for the sake argument that the trial court did rule on it, Wolfe failed to cite to that ruling and its rationale. Once again, we find waiver. "As a general rule, 'The reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment.' [Citations.] It is the duty of counsel to refer the reviewing court to the portion of the record which supports appellant's contentions on appeal. [Citation.] If no citation 'is furnished on a particular point, the court may treat it as waived.' [Citation.]" (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.)

We now turn to the applicable statute of limitations. It provides that a malpractice action against an attorney must be commenced within one year after the plaintiff discovers, or should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first. The period is tolled, inter alia, during the time: (1) the plaintiff has not sustained actual

injury; (2) the attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred; and (3) the attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney. (§ 340.6, subd. (a).)

Because Wolfe does not explain—and support with record citations—whether the trial court ruled against him based on the discovery rule or tolling, we cannot ascertain the pertinent issues. At most, Wolfe points to portions of Hixson’s cross-examination during trial and argues that by December 2002, she suspected that he had overcharged her. But the appellate record does not contain Hixson’s initial complaint, and Wolfe has not provided any record citations regarding when it was filed. Thus, we do not know why December 2002 is a significant date. In other words, Wolfe has failed to demonstrate that if Hixson knew the relevant facts by that date, then her action against him would be time-barred.

Even if we knew the pertinent dates, it would not matter. Wolfe tacitly suggests that the record lacks substantial evidence to show delayed accrual or tolling. But when conducting substantial evidence review, we must determine “whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted, in support of the judgment.” (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 369.) We are unable to consider the entire record because even though Wolfe provided transcripts of Hixson’s cross-examination, he has inexplicably not provided transcripts of her direct examination. In light of that omission, and in consideration of the partisan and incomplete nature of Wolfe’s statement of facts, it is highly doubtful that Wolfe has fairly stated the evidence supporting the judgment. Thus, it is apropos to mention that when an appellant challenges a trial court’s factual findings, he is “required to set forth in [his] brief all the material evidence on the point and not merely [his] own evidence.’ [Citations.] An appellant’s failure to state all of the evidence fairly in [his] brief waives the alleged error. [Citation.]” (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1274.)

## II. Hixson's Expert.<sup>3</sup>

The partial reporter's transcript establishes that Hixson called Connolly Oyler (Oyler) as an expert witness. According to Wolfe, the trial court erred when it found that Oyler was qualified. But Wolfe does not explain why. Specifically, he does not contend that the trial court abused its discretion. (*People v. Pearson* (2013) 56 Cal.4th 393, 445 [an appellate court must uphold a trial court's ruling on the question of an expert's qualifications absent an abuse of discretion; an abuse of discretion will be found only where the evidence shows that a witness clearly lacks qualification as an expert].) As a result, we need not analyze this issue. (*People v. Foss* (2007) 155 Cal.App.4th 113, 126 ["When an appellant fails to apply the appropriate standard of review, the argument lacks legal force"].)

Notably, in his opening brief, Wolfe purports to dissect the cross-examination of Oyler but not his direct examination. Then, in his reply, Wolfe informs us that all the citations to Oyler's testimony in the opening brief were wrong. The reply supplies a list of record citations but does not summarize the cited testimony or analyze specific statements made by Oyler. Because of this, we could not conduct a meaningful review of the issues even if we wanted to.

---

<sup>3</sup> Our analysis in part II of the Discussion disposes of the following issues identified by Wolfe: (1) "Whether the [trial court] followed the mandate of [the Evidence Code] in qualifying [Hixson's] expert [Oyler] in the areas of investigative forensic audits, tax opinions, attorney's professional negligence, legal ethics, and/or probate litigation regarding trusts," and (2) "[w]hether the [trial court] permitted prejudicial error[] by denying [Wolfe's] objections to the qualifications of [Hixson's] expert[.]"

### **III. The Referee's Report and Recommendations.<sup>4</sup>**

Wolfe contends that the trial court erred when it failed to overrule his objections to the referee's report and recommendations, but Wolfe does not identify the type of error, i.e., an error of law or an abuse of discretion. Beyond that fatal flaw, Wolfe's opening brief lacks subheadings and any sort of coherent organization. Indeed, his opening brief is so disjointed and confusing, it brings to mind another court's description of an inadequate brief when it stated, "this document is strongly reminiscent of those magazine puzzles of yesteryear where the reader was challenged to 'guess what is wrong with this picture.'" (*People v. Dougherty* (1982) 138 Cal.App.3d 278, 280.) To the degree Wolfe's argument make some semblance of sense, we conclude that they cannot be properly considered. His factual assertions are deficient due to their incomplete, one-sided nature and lack of proper record citations and, as a consequence, his arguments appear in a contextual vacuum.

### **IV. The Final Judgment.**

Last, Wolfe argues that the trial court erred by entering a final judgment for both breach of contract and negligence because the damages overlap. Just as before, Wolfe does not identify the type of error we should find. Because we do not know whether, or even if, Wolfe is urging us to find legal error, factual insufficiency or an abuse of discretion, he has failed to demonstrate grounds for reversal. On top of that, we have been given an insufficiently developed picture of the evidence and issues, and we decline to develop it on our own.

---

<sup>4</sup> Our analysis in part III of the Discussion disposes of the following issues identified by Wolfe: (1) "Whether the [trial court] committed prejudicial error by overruling [Wolfe's] objections to [the] second and final report of recommendation of referee" and (2) "[w]hether the [trial court] committed prejudicial error by incorporating the recommendations of the referee, which recommendations exceeded the authority vested in the referee pursuant to the [trial court's] reference order."

**DISPOSITION**

The judgment is affirmed.

Hixson is entitled to her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
CHAVEZ